

EAS-EPS.

MAR 27 1946

CHARLES ELMORE GOSLEY  
CLERK

Supreme Court of the United States

OCTOBER TERM—1945

No. 1004-1005

(1)

EASTERN TRANSPORTATION COMPANY,  
*Petitioner,*  
*against*

RITNER K. WALLING and MARTUG TOWING  
COMPANY,  
*Respondents.*

PETITIONS FOR WRITS OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT AND BRIEF IN  
SUPPORT THEREOF

CHRISTOPHER E. HECKMAN,  
*Attorney for Petitioner.*



# INDEX

	PAGE
Petitions for Writs of Certiorari.....	1
A. Summary Statement of the Matter Involved...	1
B. Reasons for the Allowance of the Writs.....	4
Appendix . . . . .	6
Brief for Petitioner.....	7
I. Opinions of Courts Below.....	7
II. Jurisdiction . . . . .	8
III. Statement of the Case.....	8
IV. Specifications of Error.....	8
Argument . . . . .	9
POINT I—The majority of the Circuit Court of Appeals erred in their interpretation of the regulations for lights to be displayed by the “Mamei” . . . . .	9
POINT II—The tug in charge of the tow, and the barge in tow, are jointly liable for failure to display lights as required.....	12
POINT III—The Circuit Court of Appeals erred in failing to place upon the tug “Caspian” the burden of proving that the lack of a lookout did not attribute to the collision and its decision is in conflict with those of other circuits	13
Conclusion . . . . .	14
The petitions should be granted.....	14

## TABLE OF CASES CITED

	PAGE
Ariadne, The, 80 U. S. (13 Wall.) 475.....	14
Catalina, The, (CCA-9), 95 Fed. (2) 283.....	13
Choctaw, The, (CCA-6), 270 Fed. 114.....	13
Conoho, The, 24 Fed. 758.....	11
City of Augusta, The, (CCA-1), 80 Fed. 297.....	14
Eugene F. Moran, 212 U. S. 466; 53 L. Ed. 600.....	11, 12
Hawaiian, The, (CCA-4), 124 Fed. (2d) 45.....	13
Madison, The, (CCA-2), 250 Fed. 850.....	14
Ogdensburg, The, 62 U. S. 548; 21 How. 548; 16 L. Ed. 211.....	13
Oliver, The, 22 Fed. 848.....	11
Ottawa, The, 70 U. S. 269, 275 (3 Wall.), 268; 18 L. Ed. 165.....	13
Pilot Boy, The, (CCA-4), 115 Fed. 873.....	14
Seaboard Shipping Corp. v. Globe Oil Delivery Corp., 93 Fed. (2) 463.....	11, 12
Titan, The, 23 Fed. 413.....	11
United States v. Gould (CCA-1), 73 Fed. (2) 1016, affirming 35 Fed. (2) 674.....	13
Vedamore, The, (CCA-4), 137 Fed. 844.....	13

## OTHER AUTHORITIES CITED

Judicial Code, Section 240, Amended by Act of February 13, 1925; U. S. Code, Title 28, Section 344...	8
Navigation Rules, Article 2 (U. S. C. A. 172).....	10
Navigation Rules, Article 3 (U. S. C. A. 173).....	10
Regulations Promulgated by the Board of Supervising Inspectors, Section 312.16 Pursuant to 33 U. S. C. A., Section 157 .....	2, 6, 8

# Supreme Court of the United States

OCTOBER TERM—1945

No. ....

---

EASTERN TRANSPORTATION COMPANY,  
*Petitioner,*  
*against*

RITNER K. WALLING and MARTUG TOWING  
COMPANY,  
*Respondents.*

---

## PETITIONS FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

*To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

The petition of Eastern Transportation Company, owner and claimant of the steam tug "Montrose," respectfully shows to this Honorable Court:

### A

#### Summary Statement of the Matter Involved

These are petitions for writs of certiorari to the United States Circuit Court of Appeals for the Third Circuit to review its decision, filed December 28, 1945, reported at 152 F. (2d) 924, affirming decrees of the United States District Court for the Eastern District of Pennsylvania, entered in two cases in Admiralty, upon a decision dated

August 25, 1944, and findings of fact and conclusions of law.

The litigation arose out of a collision which occurred during darkness, on May 5th, 1943, between petitioner's tug "Montrose," proceeding, without tow, westward through the Chesapeake & Delaware Canal and the barge "Mamei," owned by respondent Ritner K. Walling in tow of tug "Caspian," owned by respondent Martug Towing Company, assisted by the tug "Hudson," not a party to these or the lower Court proceedings.

As the District Court found and as the Circuit Court of Appeals recognized in its opinion, the collision was brought about because the navigator of the "Montrose" was confused by the arrangement of lights on the flotilla consisting of the barge "Mamei" with the tug "Hudson" on her starboard side and the tug "Caspian" on her port side. Structures on the deck of the "Mamei" obstructed the visibility of the starboard (green) side light of the "Caspian," which should have been visible to the "Montrose," as the latter approached the "Mamei" flotilla. Because such lights of the "Caspian" as could be seen indicated a vessel proceeding in the same direction as the "Montrose," the latter's navigator did not consider her a part of the "Mamei" flotilla and did not discover the true situation until the vessels were too close to avoid collision. There was no lookout on the forward part of the "Mamei" flotilla, and a member of the "Caspian's" crew who observed, before her navigator, danger of collision did not report it to the navigator.

Your petitioner contended that the arrangement of lights on the "Mamei" flotilla did not comply with Section 312.16 of the Regulations Promulgated by the Board of Supervising Inspectors (set forth in the appendix, p. 6), pursuant to Provisions of 33 U. S. C. A. Sec. 157, which provide that if the superstructure of a barge interferes with the visibility of either colored light of a vessel towing

such barge, the barge must carry a light of the same color as the one she obstructs. No such light was carried by the "Mamei."

Your petitioner also contended that the failure of those in charge of the navigation of the "Mamei" flotilla to station a lookout in the forward part of the vessel, placed upon those responsible for her navigation the obligation to show that the absence of such lookout could not have contributed to the collision.

The majority of Circuit Court construed the regulation for lights to apply only when a vessel, such as the "Mamei," is in tow of one tug, but held it inapplicable in this case because more than one tug was towing.

In a separate opinion, Circuit Judge BIGGS, disagreed with this interpretation and held that a correct construction of the rule required the "Mamei" to display a green light on her superstructure, on her starboard side, and a red light on her superstructure, on her port side; and further stated that, in his opinion, the interpretation by the majority of the Circuit Court "*will greatly heighten the risk of collision in the inland waters subject to the rule.*"

The Circuit Court of Appeals, erroneously, your petitioner contends, held that your petitioner was obliged to show that the absence of proper lookouts on the "Mamei" flotilla contributed to the collision.

It is petitioner's position that the interpretation of the rules for lights by the majority of the Circuit Court of Appeals will greatly heighten the risk of collision in inland waters, as Judge BIGGS stated in his separate opinion, and that the Circuit Court of Appeals should have placed upon the respondents, the burden of establishing that the lack of lookouts on the "Mamei" flotilla could not have contributed to the collision.

Your petitioner contends that the "Mamei" was at fault in not displaying lights required by the regulation of

the Supervising Inspectors, which has the force of law, and that the "Caspian," which was in charge of the "Mamei" flotilla, is at fault and must share responsibility on the same ground and also on the ground that she did not station a proper lookout.

## B

### Reasons for Allowance of the Writs

1. The case involves an interpretation of a rule regulating the lights to be displayed upon barges in tow of tugs in a great number of the inland waters of the United States, where traffic is heavy and where utmost care and caution must be exercised to avoid serious collisions with substantial resultant damage.

One member of the Court which rendered the decision has stated that in his opinion the construction of the rule by the majority of the Court is not the correct one and that such construction will greatly heighten the risk of collision.

It is of the utmost importance to the entire marine industry that there be a final and authoritative interpretation of such rule, which as far as research discloses has not been construed by this Court or any other Circuit Court of Appeals.

2. The Circuit Court of Appeals holding that the petitioner in this case was obliged to show that the absence of lookouts on the colliding flotilla contributed to the collision is in conflict with decisions of the Circuit Courts of Appeal for other circuits on an important matter.

WHEREFORE, your petitioner respectfully prays that writs of certiorari be issued out of and under the seal of this



Honorable Court, directed to the Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered and entitled on its docket 8876, October Term, 1945, Ritner K. Walling against Tug "Montrose," Eastern Transportation Company, Tug "Caspian," and Martug Towing Company; and 8877, In the Matter of the Petition of Martug Towing Company, owner of the "Caspian" for exoneration from or limitation of liability, against Eastern Transportation Company, and that said decree of the Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioner may have such other relief in the premises as may seem just.

EASTERN TRANSPORTATION COMPANY

By CHRISTOPHER E. HECKMAN,  
*Attorney for Petitioner.*